



**LT AD-HOC QUERY ON CERTIFICATE OF NO CRIMINAL ORDER
REQUESTED BY LT NCP ON 4TH JUNE 2015**

Compilation produced on 13TH AUGUST 2015

Responses from Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Sweden, United Kingdom (23 in Total)

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1. Background Information

In accordance with the recent changes in the national legislation, Lithuania requires from third country nationals who apply for a temporary residence permit to provide a certificate of no criminal record (statement of criminal record) issued by the country of the last residence (third country). Lithuania is interested in the experience and practice of other MS with such certificates.

We would like to ask the following questions:

- 1. Does your MS require a third country national applying for a residence permit to submit a certificate of no criminal record?**




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2. If yes, what institution assesses these certificates and what is the procedure of assessment?
3. What impact (weight) does this certificate have in deciding whether to grant a residence permit or not?
4. What is the required validity of the certificate (meaning when does it need to be issued at the earliest to be valid)?

We would very much appreciate your responses by **1st July 2015**.

2. Responses¹



		Wider Dissemination? ²	
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Belgium	Yes	<ol style="list-style-type: none"> 1. Yes, in the framework of economic and academic migration, student migration and family reunification. 2. The competent authority of the country of origin. The Belgian diplomatic missions know which competent authority can deliver such a certificate in the country of origin. 3. If a person cannot produce a clean criminal record, the personal conduct of this individual is examined to see if he represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of the Belgian society. 4. The certificate may not be older than 6 months (validity of 6 months).
	Czech Republic	Yes	<ol style="list-style-type: none"> 1. According to the Czech national legislation (the Act on Residence of Foreign Nationals in the Territory of the Czech Republic), an applicant is required to submit a certificate of no criminal record (“a document similar to an extract from the Czech Penal Register”) <u>only upon request</u> of the Ministry of the Interior or the relevant Czech Embassy. However, such request is made in almost all cases. A certificate of no criminal record is not required from a foreign national under 15 years. (An applicant is not obliged to submit an extract from the Czech Penal Register, the Ministry of the Interior is authorized to obtain it itself). 2. The certificate is assessed by the Ministry of the Interior which examines the formal aspects of the certificate and the nature of the criminal record. The certificate has to be issued by the state of which an applicant is a citizen, as well as all the states in which, in the last 3 years, he has resided continuously for a period longer than 6 months. In the event that this state does not issue such a document, a signed affidavit is required instead. The certificate has to be super legalised by the Czech Embassy, unless

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."



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			<p>specified otherwise by an international treaty (e. g. the Haag Convention – Apostille), and provided with official translation into the Czech language.</p> <p>3. An application may be rejected if the nature of the criminal record raises concern that the foreign national poses a potential threat to the homeland security or public order.</p> <p>4. On the date the application is filed, the certificate must not be older than 6 months.</p>
	Estonia	Yes	<p>1. No, but while TCN submits an application for temporary residents permit, an application consists of questions concerning criminal record, such as:</p> <ul style="list-style-type: none"> • Does an applicant has been repeatedly punished pursuant to criminal procedure for an intentionally committed criminal offence? • Does an applicant has committed a crime, for which he or she has been sentenced to imprisonment for a term of more than one year and his or her yes no criminal record has not expired? • Does an applicant has been punished for deliberate crime against the state of Estonia and his or her criminal record has not expired? <p>If answers to this questions is yes, more detailed information must be provided by applicant.</p> <p>2. The Police and Border Guard Board or the Estonian Security Police.</p> <p>3. Considered by case basis but according to Aliens Act residence permit will not be issued if:</p> <ul style="list-style-type: none"> • an alien has committed a criminal offence for which he or she has been sentenced to imprisonment for a term for more than one year and his or her criminal record has not expired; • an alien has been repeatedly punished in Estonian for intentionally committed crime against the state and his punishment has not expired; • an alien has been repeatedly punished pursuant to criminal procedure for intentionally committed criminal offences; • if there is information about an alien or a good reason to believe that he or she belongs to a criminal organisation, or is connected with the illegal conveyance of narcotics, psychotropic substances or persons across the border or the temporary control line, or he or she is a member of a terrorist organisation, or he or she has committed or there is a good reason to believe that he or she may commit an act of terrorism, or he or she is involved in financing or supporting terrorism or money laundering. For the reason that be considered as a threat to the national security. <p>4. Generally one year.</p>
	Finland	Yes	<p>1. No, a certificate of no criminal record is not a requirement. However, section 36 (1) of the Finnish Aliens’ Act states that a residence permit may be refused if the alien is considered a danger to public order, security or health or to Finland’s international relations.</p> <p>During the processing of an application for a residence permit, an examination of the criminal record may be undertaken with the consent of the applicant, if it is considered necessary in the individual assessment of the application. The application form for a</p>




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			<p>residence permit includes a section with questions on the applicant's criminal history. (E.g. application form for a residence permit for an employed person Section C 7 http://www.migri.fi/download/41723_OLE_TY1_en.pdf?cd44228ef234d288). If the applicant states in the application that he/she has committed criminal offences in Finland or abroad, or if it comes to the knowledge of the Finnish Immigration Service that the applicant has committed criminal offences, the criminal record is always examined.</p> <ol style="list-style-type: none"> 2. N/a 3. N/a 4. N/a
	France	Yes	<ol style="list-style-type: none"> 1. According to the decree of September, 12th 2007 (NOR: IMID0766668A), a certificate of no criminal record is required for first residence permit applications for Third Country Nationals (TCNs) who want to carry out a commercial, industrial or craft activity. A TCN needs to obtain this document from his/her country of origin. The document will be then translated into French and legalized if necessary. It needs to be issued by a local authority competent for public order issues. For other countries where he/she has been residing for the last 10 years, he/she needs to provide a sworn declaration of non-bankruptcy and non-conviction. Providing criminal record is not required for other categories of applicants. However, French consular offices can request information to French or local police authorities on a case by case basis (depending on nationalities, country of residence, sector of activity, etc.) for example to verify that the applicant is not on the Interpol / Europol list. Moreover, in the case of a residence permit renewal application, prefectures ask directly the Ministry of Justice for the applicant's certificate of no criminal record (called B2 model). This document is only available between administrative authorities and mentions most serious infringements to law and penal sanctions. 2. The Ministry of Justice is competent for issuing this document to individuals or administrations. 3. In any case, this certificate will allow the issuance/renewal or not of the residence permit. The refusal decision can be then based on public order issues. Usually it needs to be issued during the last 3 months.
	Germany	Yes	<ol style="list-style-type: none"> 1. Yes, but as a rule the presentation of a certificate of good conduct by the foreigner is not required. 2. The foreigners authority responsible for the decision to grant residence permits can in principle receive unrestricted information from the Federal Central Register (with exceptions, e.g. as the sentencing to juvenile sentences), § 41 paragraph 1 no. 7 Federal Central Register Act. 3. The information is incorporated into the assessment of the general condition for granting a residence permit, as no expulsion interest directed against the alien may exist. 4. A specific period of validity is not specified, the timeliness of the information results from the request of the foreigners authority at the Federal Central Register.




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	Greece	Yes	<ol style="list-style-type: none"> 1. According to national legislation, for a temporary stay authorization (for seasonal workers, fish workers, tour leaders, temporary contractual workers etc) a third country national should apply for a national visa, which is issued by the Greek consular authorities (no residence permits is required). In such cases, a Criminal Record Certificate issued by the competent foreign authorities is required (this is a prerequisite for all categories of TCNs requesting a national visa), certifying the penal position of the applicant in his country of residence. In cases where the applicant is residing in a country other than that of his origin, for more than one year prior to submitting the visa application, criminal records from the country of origin may also be requested (this applies only in cases that the country of previous residence does not require a criminal record for granting residence authorization). 2. As mentioned above, the consular authorities of the country of previous residence is competent for the assessment of the Criminal Record Certificate. In cases where there is a final court decision, irrespective of the sentence imposed, and in order to evaluate the relevance of the offense, compared to reasons that may constitute a threat to public order and security, the competent consular authority may seek for specific reasoning and take into account the individual parameters, such as the severity of the offense, relapse and the overall unlawful conduct of the third-country national. 3. If it is proven that the TCN concerned is a threat to public order and security, then the application is rejected and the TCN is provided with relevant a document which clearly sets out the reasons for the rejection. The Criminal Record Certificate should be recent, in order to ensure the current penal position of the person concerned.
	Hungary	Yes	<ol style="list-style-type: none"> 1. Third country nationals do not have to submit a certificate of no criminal record when they apply for residence permits which are issued for a determined period of time. However, third country nationals must submit a certificate of no criminal record when they apply for <i>national permanent residence permits</i>. According to Subsection (2) of Section 94 of the Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third Country Nationals (hereinafter referred to as RRTN) enclosed with the application for a national permanent residence permit, the applicant shall – in addition to what is contained in Subsection (1) –supply a certificate of clean criminal record issued within six months to date by the competent authority of the country where the applicant’s permanent or temporary residence was located before his/her entry to Hungary. 2. The examination of the certificates is performed by the immigration authority, and the same authority makes the decision on issuing the national permanent residence permits as well. The information obtained from the certificate is assessed at the time of decision-making according to Subsection (5) of Section 35 of the RRTN. 3. According to Subsection (5) of Section 35 of the RRTN, a national permanent residence permit shall not be issued to any third-country national who has a prior criminal record, until relieved from the detrimental legal consequences related to his/her criminal record. 4. According to Subsection (2) of Section 94 of the Government Decree 114/2007 (V. 24.) on the Implementation of the RRTN the submitted certificate of no criminal record shall be issued within six months to date.
	Italy	Yes	<ol style="list-style-type: none"> 1. No. In general, a third-country national arriving in Italy for the first time has 8 days to apply for a residence permit to the <i>Questura</i> (provincial police headquarters) of the province where he/she intends to stay. For the purposes of obtaining a residence






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			<p>permit, the third-country national has to provide a number of documents with his/her application (passport, pictures, etc.), but not a certificate of no criminal record.</p> <p>At any rate, a residence permit application may be rejected if the foreign applicant (a) is the subject of an alert in the Schengen Information System; (b) has been deported on grounds of public policy, national security and protection of international relations; (c) is considered to be a threat for public order or for the security of the State or of one of the countries with which Italy has signed agreements on the abolition of internal border controls and the free movement of persons; (d) has been convicted of crimes concerning drugs, sexual freedom, facilitation of illegal immigration to Italy or of illegal migration from Italy to other States, or of crimes aimed at recruiting people for the purposes of prostitution or exploitation of prostitution, or minors to employ in illegal activities; (<i>Consolidated Act on Immigration</i>, Articles 5(5) and 5(6))</p>
	Latvia	Yes	<ol style="list-style-type: none"> 1. Yes, it is one of the basic documents a third-country national must submit when requesting temporary residence permit for the first time. 2. The certificate is assessed by the Residence Permit Division, who decides on the residence permit. Residence Permit Division may examine application only if all documents required under the Immigration Law (including certificate of criminal record) are submitted. This certificate will be issued by a competent institution of the citizenship or the host country (for a foreigner more than 14 years old), if a foreigner has resided in that country longer than 12 months 3. The issue of a residence permit shall be refused if third-country nationals by judgement of a court have been found guilty for committing such criminal offence in the Republic of Latvia or outside it, for which the sentence – deprivation of liberty for a time period, which exceeds three years – is provided for by the law of the Republic of Latvia. 4. The certificate is valid for six months after it was issued.
	Lithuania	Yes	<ol style="list-style-type: none"> 1. Yes, third country nationals applying for the first temporary residence permit must provide it. 2. The same institution which is taking the decision on issuing the temporary residence permit – the Migration Department. The information obtained from the certificate is assessed together with all the other information received for the examining of the application. Since this requirement is recent, there is no detailed assessment procedure elaborated yet. 3. The information contained in the certificate is complementary. In individual cases it can serve as a ground to consider that the third country national poses a threat to the public policy or public order of Lithuania – hence the reason to reject the application. 4. At the moment the required validity of the certificate is not defined.
	Luxembourg	Yes	<ol style="list-style-type: none"> 1. Yes. In Luxembourg, third country nationals applying for the first time for an authorisation of stay must attach to the application an extract from the applicant's police/criminal record or a sworn affidavit that he/she does not have a criminal record of his/her last country of residence. 2. In Luxembourg, the assessment is conducted by the Directorate of Immigration of the Ministry of Foreign and European Affairs with the assistance of the Grand-Ducal Police. The Grand Ducal Police will make the relevant verifications in all the databases (i.e. Interpol, SIS, etc.) and with other police institutions. 3. The Ministry in charge of Immigration will take a motivated decision based on all the elements in the file. However, the




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			<p>relevance of the criminal record is considered and may be decisive in a context of a threat to public policy The law only requires a recent criminal record of the country of last residence. The criminal record will be valid for a maximum of 6 months.</p>
	Malta	Yes	<p>The Authorities responsible for the issue of residence permits do not, in general, require that applicants for a residence permit to submit a certificate of no criminal record. However persons applying for a special tax status under the <i>Malta Residence Programme</i> whereby third country nationals qualifying for such status are entitled to reside in Malta and hence are granted a residence permit have to submit an Apostille conduct certificate, issued not earlier than six (6) months prior to the date of submission of the application for such status, by the country in which the individual was last resident. Such Programme is implemented by the Inland Revenue Department and assessment regarding the grant or refusal of such status is undertaken by the said Department. The Authorities, within the Ministry for Home Affairs and National Security, which are responsible for the issue of residence permits are guided by the decision of the Inland Revenue regarding the issue of the relative residence permit.</p>
	Netherlands	Yes	<ol style="list-style-type: none"> 1. No. A certificate of no criminal record issued by the country of origin is not required. The alien has to sign a declaration of no criminal record. In addition, we check national police databases and person alerts in SIS. 2. N/A 3. N/A 4. N/A
	Poland	Yes	<ol style="list-style-type: none"> 1. No, Poland does not require a third country national applying for a residence permit to submit a certificate of no criminal record. 2. N/A 3. N/A 4. N/A
	Portugal	Yes	<ol style="list-style-type: none"> 1. Yes. In Portugal, SEF [Portuguese Immigration and Borders Service] has direct access to the Ministry of Justice database. SEF may at any time access the database; there is no need for the citizen to require such consultation. 2. The criminal record from the country of origin shall be required by the interested party at the diplomatic representation in PT, or where there is no representation, to the responsible authority in the country of origin. 3. If the certificate has criminal information on the interested party, the residence permit will not be issued. The certificate regularly has six-month validity, starting as from the date of issuing (if it is requested at the country of origin).
	Slovak Republic	Yes	<ol style="list-style-type: none"> 1. Yes, when submitting an application for a residence permit, it is required to submit also a certificate of no criminal record from the country of origin as well as from the country where the person resided in the last 3 years for more than 90 days during 6 consecutive months. If such a record is not issued, it is possible to substitute it with an equal document issued by a respective authority or

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			<p>administrative body of the country of origin or to replace it with a declaration by the third country national in front of a judicial or administrative body or a notary of a country of origin or the last residence. The certificate of no criminal record has to prove no criminal record within the entire territory of the country by which it was issued. Otherwise it will not be accepted by the Police.</p> <ol style="list-style-type: none"> 1. When considering the application for the residence permit, the administrative body (respective department of the Alien Police) shall decide whether it is possible to accept the certificate of no criminal record based on the national legislation and a respective internal regulation. If there is a reason or a doubt regarding acceptance of the certificate, the Police department sends its copy for an assessment/ verification through a subordinated directorate (with regional scope of authority) to the Bureau of Border and Aliens Police of the Police Force Presidium (BBAP PFP) (with the national scope of authority). The BBAP PFP cooperates with diplomatic missions of the Slovak Republic abroad. Slovak Republic has an internal database for the purpose of a correct verification of certificates of criminal records (the database serves as a methodological tool for the assessment of certificates of criminal records as well as its correct legalization). The database consists of information on the way in which the certificates of criminal records are issued in different countries as well as information on which authorities are responsible or eligible to issue such documents. Some countries have provided specimens of documents which is the best way of assessment of authenticity of documents. On the other hand, in case of some countries, there are only those documents available which were submitted during lodging an application for residence permit and form of which was accepted by diplomatic missions of the Slovak Republic abroad. When considering the acceptance of documents during the procedure for residence permit, the key facts are whether the document is not older than 90 days, whether the document was issued by an eligible authority, whether the document proves no criminal record in the whole territory of the country and whether the document was legalized in an appropriate way and translated into Slovak language. 2. If the document is not submitted or it is submitted in an insufficient way, it is a reason for not granting of a residence permit.
	Slovenia	Yes	<ol style="list-style-type: none"> 1. Yes, third country nationals applying for the residence permit must provide it with the rest of required documents; 2. Responsible Administrative Unit under Ministry of the Interior which also taking the final decision on issuing the residence permit. The information obtained from the certificate is assessed together with the rest of collected information. Certificate needs to be valid and stamped by the “Apostille” as required by the legislation on foreign public documents (The Apostille Convention). 3. Information contained in the certificate is complementary. It can serve also as reasons for rejection for issuing residence permit if other information indicate that applicant would violate or misuse national legislations or treat public order, etc. 4. Certificate needs to be valid up to 3 months. The final decision needs to be taken by responsible authority before Certificate expired which is 6 months upon issued. Exceptions are possible but they are assessed for each individual case.
	Sweden	Yes	<p>No, not for persons applying from outside Sweden. If the Migrations Agency have information about criminal activity the possibility exists. The Migration Agency has the possibility to see if a person exists in the Swedish criminal record register. Additional is also information from the SIS – system.</p>
	United Kingdom	Yes	<ol style="list-style-type: none"> 1. Does your MS require a third country national applying for a residence permit to submit a certificate of no criminal record? The UK is in the process of introducing a requirement for certain entry clearance applicants to provide an overseas criminal record



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			<p>certificate. We introduced changes to the immigration rules in April 2015 which included a provision to refuse entry clearance applicants who fail to provide certificates (as below)</p> <p>320 2A Failure if required to do so, by a person seeking entry to the United Kingdom to provide a criminal record certificate from the relevant authority in any country in which they have resident for 12 months or more, in the past 10 years. Such evidence will not normally be required where the applicant is aged 17 years old or under at the date the application is made; or It is not reasonably practicable for the applicant to obtain such evidence from the relevant authorities.</p> <p>The requirement has yet to be introduced, but will be rolled out on a phased basis to specific entry clearance applicants. There is no equivalent provision for in-country applicants yet</p> <p>2. If yes, what institution assesses these certificates and what is the procedure of assessment? The Home Office will assess the certificates, and in appropriate cases seek to verify the information provided with relevant authority or other sources.</p> <p>3. What impact (weight) does this certificate have in deciding whether to grant a residence permit or not? Entry clearance applicants are already asked to provide details of any UK or overseas criminal record. Where there is evidence of offending they may be refused depending on the length of any custodial sentence or the time since they were convicted or admitted the offence. Full details are provided within the General Grounds for Refusal. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/422941/20150406_Immigration_Rules_-_Part_9_final_v4.pdf#</p> <p>For entry clearance/leave to enter applicants</p> <p>Mandatory refusal - an applicant will be refused on the grounds of criminal record if they have: 320 (2) the fact that the person seeking entry to the United Kingdom: (a) is currently the subject of a deportation order; or (b) has been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years; or (c) has been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 12 months but less than 4 years, unless a period of 10 years has passed since the end of the sentence; or (d) has been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 12 months, unless a period of 5 years has passed since the end of the sentence.</p> <p>Discretionary refusal - they should normally be refused when: 320 (18A) within the 12 months prior to the date on which the application is decided, the person has been convicted of or admitted an offence for which they received a non-custodial sentence or other out of court disposal that is recorded on their criminal record;</p>
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			<p>(18B) in the view of the Secretary of State: (a) the person's offending has caused serious harm; or (b) the person is a persistent offender who shows a particular disregard for the law.</p> <p>(19) The immigration officer deems the exclusion of the person from the United Kingdom to be conducive to the public good. For example, because the person's conduct (including convictions which do not fall within paragraph 320(2)), character, associations, or other reasons, make it undesirable to grant them leave to enter</p> <p>For leave to remain (in-country applicants) and ILR applicants – see 322 (1C) and 322 (5), (5A)</p> <p>4. What is the required validity of the certificate (meaning when does it need to be issued at the earliest to be valid)? As mentioned in Q1 – we are in the process of introducing the requirement, our provisions validity of the certificate is within 6 months of the application date.</p>
	Croatia	Yes	<p>1. No. According to the Croatian Foreigners Act, third country national is not obliged to provide a certificate of no criminal record issued by the country of the last residence (third country) when applying for a temporary residence permit.</p>
	Norway	Yes	<p>1. No, such a certificate is not normally required to process an application for a residence permit and in the few cases where it is indicated the requirement is not explicit. The guidelines for processing applications for qualified professionals (RS 2010-144), refer to other guidelines (RS 2010-046 pt. 3.3. about among others, religious leaders) which state that an application for a residence permit can be denied if there is a basis for expulsion, or if the applicant represents a threat to public safety or national security. Applicants are however, questioned (in the application form) about whether they have been convicted of a crime either in Norway or in their country of origin. However, in the case where a foreigner has been expelled from Norway due to having committed a criminal offence, and then later applies for re-admittance to Norway, a certificate of no criminal record <i>is supposed to be</i> included in that application.</p>
